

HOUSE BILL NO. 126

INTRODUCED BY S. MENDENHALL

BY REQUEST OF THE ECONOMIC AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT SIMPLIFYING AND CLARIFYING THE WORKERS' COMPENSATION ACT; CHANGING THE TERM "AVERAGE WEEKLY WAGE" TO "STATE'S AVERAGE WEEKLY WAGE"; AMENDING SECTIONS 17-6-317, 17-6-318, 39-11-103, 39-11-202, 39-71-116, 39-71-118, 39-71-401, 39-71-2211, AND 39-71-2312, MCA; REPEALING SECTIONS 39-71-221, 39-71-222, 39-71-416, 39-71-426, 39-71-427, 39-71-428, 39-71-801, 39-71-802, 39-71-803, 39-71-804, 39-71-805, 39-71-806, 39-71-807, 39-71-808, 39-71-809, 39-71-810, 39-71-811, 39-71-812, AND 39-71-813, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 17-6-317, MCA, is amended to read:

"17-6-317. Participation by private financial institutions -- rulemaking. (1) (a) The board may jointly participate with private financial institutions in making loans to a business enterprise if the loan will:

(i) result in the creation of a business estimated to employ at least 10 people in Montana on a permanent, full-time basis;

(ii) result in the expansion of a business estimated to employ at least an additional 10 people in Montana on a permanent, full-time basis; or

(iii) prevent the elimination of the jobs of at least 10 Montana residents who are permanent, full-time employees of the business.

(b) Loans under this section may be made only to business enterprises that are producing or will produce value-added products or commodities.

(c) A loan made pursuant to this section does not qualify for a job credit interest rate reduction under 17-6-318.

(2) A loan made pursuant to this section may not exceed 1% of the coal severance tax permanent fund and must comply with each of the following requirements:

1 (a) (i) The business enterprise seeking a loan must have a cash equity position equal to at least 25%
2 of the total loan amount.

3 (ii) A participating private financial institution may not require the business to have an equity position
4 greater than 50% of the total loan amount.

5 (iii) If additional security or guarantees, exclusive of federal guarantees, are required to cover a
6 participating private financial institution, then the additional security or guarantees must be proportional to the
7 amount loaned by all participants, including the board of investments.

8 (b) The board shall provide 75% of the total loan amount.

9 (c) The term of the loan may not exceed 15 years.

10 (d) The board shall charge interest at the following annual rate:

11 (i) 2% for the first 5 years if 15 or more jobs are created or retained;

12 (ii) 4% for the first 5 years if 10 to 14 jobs are created or retained;

13 (iii) 6% for the second 5 years; and

14 (iv) the board's posted interest rate for the third 5 years, but not to exceed 10% a year.

15 (e) (i) The interest rates in subsections (2)(d)(i) and (2)(d)(ii) become effective when the board receives
16 certification that the required number of jobs has been created or as provided in subsection (2)(e)(ii). If the board
17 disburses loan proceeds prior to creation of the required jobs, the loan must bear interest at the board's posted
18 rate.

19 (ii) In establishing interest rates under subsections (2)(d)(i) and (2)(d)(ii) for preventing the elimination
20 of jobs, the board shall require the submission of financial data that allows the board to determine if the loan and
21 interest rate will in fact prevent the elimination of jobs.

22 (f) If a business entitled to the interest rate in subsection (2)(d)(i) or (2)(d)(ii) reduces the number of
23 required jobs, the board may apply a graduated scale to increase the interest rate, not to exceed the board's
24 posted rate.

25 (g) For purposes of calculating job creation or retention requirements, the board shall use the state's
26 average weekly ~~salary~~ wage, as defined in 39-71-116, multiplied by the number of jobs required. This calculated
27 number is the minimum aggregate salary threshold that is required to be eligible for a reduced interest rate. If
28 individual jobs created pay less than the state's average weekly ~~salary~~ wage, the borrower shall create more
29 jobs to meet the minimum aggregate salary threshold. If fewer jobs are created or retained than required in
30 subsection (2)(d)(i) or (2)(d)(ii) but aggregate salaries meet the minimum aggregate salary threshold, the

borrower is eligible for the reduced interest rate. A job paying less than the minimum wage, provided for in 39-3-409, may not be included in the required number of jobs.

(h) (i) A participating private financial institution may charge interest in an amount equal to the national prime interest rate, adjusted on January 1 of each year, but the interest rate may not be less than 6% or greater than 12%.

(ii) At the borrower's discretion, the borrower may request the lead lender to change this prime rate to an adjustable or fixed rate on terms acceptable to the borrower and lender.

(iii) A participating private financial institution, or lead private financial institution if more than one is participating, may charge a 0.5% annual service fee.

(i) The business enterprise may not be charged a loan prepayment penalty.

(j) The loan agreement must contain provisions providing for pro rata lien priority and pro rata liquidation provisions based upon the loan percentage of the board and each participating private lender.

(3) If a portion of a loan made pursuant to this section is for construction, disbursement of that portion of the loan must be made based upon the percentage of completion to ensure that the construction portion of the loan is advanced prior to completion of the project.

(4) A private financial institution shall participate in a loan made pursuant to this section to the extent of 85% of its lending limit or 25% of the loan, whichever is less. However, the board's participation in the loan must be 75% of the loan amount.

(5) A business enterprise receiving a loan under the provisions of this section may not pay bonuses or dividends to investors until the loan has been paid off, except that incentives may be paid to employees for achieving performance standards or goals.

(6) The board may adopt rules that it considers necessary to implement this section."

Section 2. Section 17-6-318, MCA, is amended to read:

"17-6-318. Job credit interest rate reduction for business loan participation. (1) A borrower who uses the proceeds of a business loan participation funded under the provisions of this part to create jobs employing Montana residents is entitled to a job credit interest rate reduction for each job created to employ a Montana resident. A borrower who uses the proceeds of a loan made pursuant to 17-6-309(2) to create jobs is entitled to a job credit interest rate reduction for each job created. The job credit interest rate reduction is equal to 0.05% for each job created to employ a Montana resident, up to a maximum interest rate reduction of 2.5%.

(2) If the salary or wage of the job created:

(a) exceeds the state's average weekly wage, as defined in 39-71-116, the amount of the job credit interest rate reduction may be increased proportionately for each increment of 25% above the state's average weekly wage to a maximum of two times the state's average weekly wage; or

(b) is less than the state's average weekly wage, as defined in 39-71-116, the job credit interest rate reduction is reduced proportionately for each 25% increment below the state's average weekly wage.

(3) A job credit interest rate reduction may not be allowed for a job created by the borrower using the proceeds of the loan for which the salary or wage is less than the minimum wage provided for in 39-3-409.

(4) A job credit may not be given unless one whole job is created.

(5) To qualify for the job credit interest rate reduction, the borrower shall provide satisfactory evidence of the creation of jobs and shall make a written application to the board through its financial institution or, in the case of a loan made pursuant to 17-6-309(2), shall make a written application directly to the board."

Section 3. Section 39-11-103, MCA, is amended to read:

"39-11-103. (Temporary) Definitions. As used in this chapter, the following definitions apply:

~~(1) "Average weekly wage" has the meaning provided in 39-71-116.~~

~~(2)~~(1) "Eligible training provider" means:

(a) a unit of the university system, as defined in 20-25-201;

(b) a community college district, as defined in 20-15-101;

(c) an accredited, tribally controlled community college located in the state of Montana; or

(d) an entity approved to provide workforce training that is included on the eligible training provider list.

~~(3)~~(2) "Eligible training provider list" means the list maintained by the department of labor and industry of those eligible training providers who may be used to provide workforce training under a grant authorized in 39-11-202.

~~(4)~~(3) "Employee" means the individual employed in a new job.

~~(5)~~(4) "Employer" means the individual, corporation, partnership, or association providing new jobs and entering into a grant contract.

~~(6)~~(5) "Full-time job" means a predominantly year-round position requiring an average of 35 hours of work each week.

~~(7)~~(6) (a) "New job" means a newly created full-time job in an eligible business.

(b) The term does not include:

(i) jobs for recalled employees returning to positions held previously, for replacement employees, or for employees newly hired as a result of a labor dispute, part-time or seasonal jobs, or other jobs that previously existed within the employment of the employer in the state; or

(ii) jobs created by an employer as the result of an acquisition of a Montana company or entity if those jobs previously existed in the state of Montana in the acquired company or entity unless it is demonstrated that the jobs:

(A) are substantially different as a result of the acquisition; and

(B) will require new training for the employee to meet new job requirements.

~~(8)(7)~~ "New jobs credit" means the credit provided in 39-11-203.

~~(9)(8)~~ "Office of economic development" means the office of economic development established in 2-15-218.

~~(10)(9)~~ "Primary sector business" means an employer engaged in expanding operations within Montana that through the employment of knowledge or labor adds value to a product, process, or export service that results in the creation of new wealth and for which at least 50% of the sales of the employer occur outside of Montana or the employer is a manufacturing company with at least 50% of its sales to other Montana companies that have 50% of their sales occurring outside of Montana.

~~(11)(10)~~ "Primary sector business training program" or "program" means the grant provided to employers for the purpose of working with eligible training providers to provide employees with education and training required for jobs in new or expanding primary sector businesses in the state.

~~(12)(11)~~ (a) "Program costs" means all necessary and incidental costs of providing program services.

(b) The term does not include the cost of purchase of equipment to be owned or utilized by the eligible training provider.

~~(13)(12)~~ "Program services" means training and education specifically directed to the new jobs, including:

(a) all direct training costs, such as:

(i) program promotion;

(ii) instructor wages, per diem, and travel;

(iii) curriculum development and training materials;

(iv) lease of training equipment and training space;

- (v) miscellaneous direct training costs;
- (vi) administrative costs; and
- (vii) assessment and testing;
- (b) in-house or on-the-job training; and
- (c) subcontracted services with eligible training providers.

(13) "State's average weekly wage" has the meaning provided in 39-71-116. (Terminates June 30, 2007--sec. 10, Ch. 567, L. 2003.)"

Section 4. Section 39-11-202, MCA, is amended to read:

"39-11-202. (Temporary) Primary sector business workforce training grants -- eligibility. (1) The grant review committee provided for in 39-11-201 may award workforce training grants to primary sector businesses that provide education or skills-based training, through eligible training providers from the eligible training provider list, for employees in new jobs.

(2) To be eligible for a grant, an applicant shall demonstrate that at least 50% of the applicant's sales will be from outside of Montana or that the applicant is a manufacturing company with 50% of its sales from companies that have 50% of their sales outside of Montana and must meet at least one of the following criteria:

- (a) be a value-adding business as defined by the Montana board of investments;
- (b) demonstrate a significant positive economic impact to the region and state beyond the job creation involved;
- (c) provide a service or function that is essential to the locality or the state; or
- (d) be a for-profit or a nonprofit hospital or medical center providing a variety of medical services for the community or region.

(3) An applicant shall also provide a match of at least \$1 for every \$3 requested. The match:

- (a) must be from new, unexpended funds available at the time of application;
- (b) may include new loans and investments and expenditures for direct project-related costs such as new equipment and buildings. The committee may consider recent purchases of fixed assets directly related to the proposal on a case-by-case basis. A purchase of fixed assets directly related to the proposed training activities that have been made within 90 days after submission of the application may be considered eligible by the department.

(4) (a) Except as provided in subsection (4)(c), a grant provided under this section may not exceed

1 \$5,000 for each full-time position for which an employee is being trained. A grant may be provided only for a new
2 job ~~that has~~ for which an average weekly wage is paid that meets or exceeds the lesser of ~~Montana's~~ the current
3 state's average weekly wage, the current average weekly wage of the county in which the employees are to be
4 principally employed, or for jobs that will be principally located on a reservation, the current average weekly
5 wage of the reservation.

6 (b) The office of economic development may consider the value of employee benefits in calculating the
7 expected annual wage.

8 (c) The committee may, in exceptional circumstances, consider a higher grant ceiling for jobs that will
9 pay significantly higher wages and benefits if the need for higher training costs is documented in the application.

10 (d) A grant provided under this section may not exceed an amount greater than the present value of
11 expected incremental tax receipts, as described in 39-11-203, that are expected over the 10-year period
12 immediately following the grant award. The committee shall consider the loan rate established by the board of
13 investments pursuant to the Municipal Finance Consolidation Act of 1983 that is in effect at the time of the grant
14 and the state personal income tax rates in effect or those rates scheduled to take effect in calculating the
15 maximum grant amount.

16 (5) A primary sector business workforce training program must involve at least 10 new jobs unless
17 unique circumstances are documented that indicate a significant, positive, secondary impact to the local
18 economy. Funding ceilings will be determined by the availability of funding, the cost for each job, and the quality
19 of the primary sector business proposal.

20 (6) The grant application, at a minimum, must contain:

21 (a) a business plan containing information that is sufficient for the committee to obtain an adequate
22 understanding of the business to be assisted, including the products or services offered, estimated market
23 potential, management experience of principals, current financial position, and details of the proposed venture.
24 In lieu of a business plan, the committee may consider a copy of the current loan application to entities such as
25 the Montana board of investments, the federal business and industry guarantee program, or the small business
26 administration.

27 (b) financial statements and projections for the 2 most recent years of operation and projections for each
28 of the 2 years following the grant, including but not limited to balance sheets, profit and loss statements, and
29 cash flow statements. A business operating for less than 2 years shall provide all available financial statements.

30 (c) a hiring and training plan, which must include:

- 1 (i) a breakdown of the jobs to be created or retained, including the number and type of jobs that are
2 full-time, part-time, skilled, semiskilled, or unskilled positions;
- 3 (ii) a timetable for creating the positions and the total number of employees to be hired;
- 4 (iii) an assurance that the business will comply with the equal opportunity and nondiscrimination laws;
- 5 (iv) procedures for outreach, recruitment, screening, training, and placement of employees;
- 6 (v) a description of the training curriculum and resources;
- 7 (vi) written commitments from any agency or organization participating in the implementation of the hiring
8 plan; and
- 9 (vii) a description of the type and method of training to be provided to employees, the starting wage and
10 wage to be paid after training for each position, the job benefits to be paid or provided, and any payment to
11 eligible training providers.

12 (7) If the committee determines that an applicant meets the criteria established in this section and has
13 complied with the applicable procedures and review processes established by the committee, the committee
14 may award a primary sector business workforce development grant to the employer and authorize the
15 disbursement of funds to the primary sector business.

16 (8) (a) A contract with a grant recipient must contain provisions:

17 (i) certifying that the full amount of the grant will be reimbursed in the event that the primary sector
18 business ceases operation within 12 months from the time that the grant is awarded;

19 (ii) requiring the employer receiving the grant to repay any shortfall in the personal income tax revenues
20 to the state, as calculated in 39-11-203, that are the result of the company failing to meet the number of jobs or
21 pay level of those jobs described in the final grant application. A shortfall in any fiscal year must be accessed
22 against and paid by the company in the next fiscal year.

23 (iii) providing the department with annual reports and a final closeout report that documents the higher
24 wages paid to an employee upon completion of the training.

25 (b) The contract must be signed by the person in the primary sector business who is assigned the duties
26 and responsibilities for training and the overall success of the program and by the primary sector business's chief
27 executive. (Terminates June 30, 2007--sec. 10, Ch. 567, L. 2003.)"

28
29 **Section 5.** Section 39-71-116, MCA, is amended to read:

30 **"39-71-116. Definitions.** Unless the context otherwise requires, in this chapter, the following definitions

1 apply:

2 (1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker
3 reaches maximum healing are less than the actual wages the worker received at the time of the injury.

4 (2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act
5 and the Occupational Disease Act of Montana necessary to:

6 (a) investigation, review, and settlement of claims;

7 (b) payment of benefits;

8 (c) setting of reserves;

9 (d) furnishing of services and facilities; and

10 (e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

11 (3) "Aid or sustenance" means a public or private subsidy made to provide a means of support,
12 maintenance, or subsistence for the recipient.

13 ~~(4) "Average weekly wage" means the mean weekly earnings of all employees under covered~~
14 ~~employment, as defined and established annually by the department. It is established at the nearest whole dollar~~
15 ~~number and must be adopted by the department before July 1 of each year.~~

16 ~~(5)~~(4) "Beneficiary" means:

17 (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

18 (b) an unmarried child under 18 years of age;

19 (c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is
20 enrolled in an accredited apprenticeship program;

21 (d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the
22 decedent for support at the time of injury;

23 (e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time
24 of the injury if a beneficiary, as defined in subsections ~~(5)(a)~~ (4)(a) through ~~(5)(d)~~ (4)(d), does not exist; and

25 (f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the
26 decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as
27 defined in subsections ~~(5)(a)~~ (4)(a) through ~~(5)(e)~~ (4)(e), does not exist.

28 ~~(6)~~(5) "Business partner" means the community, governmental entity, or business organization that
29 provides the premises for work-based learning activities for students.

30 ~~(7)~~(6) "Casual employment" means employment not in the usual course of the trade, business,

profession, or occupation of the employer.

~~(8)(7)~~ "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

~~(9)(8)~~ (a) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors listed in major group 23 in the North American Industry Classification System Manual.

~~(b)~~ The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

~~(10)(9)~~ "Days" means calendar days, unless otherwise specified.

~~(11)(10)~~ "Department" means the department of labor and industry.

~~(12)(11)~~ "Fiscal year" means the period of time between July 1 and the succeeding June 30.

~~(13)(12)~~ (a) "Household or domestic employment" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, ~~but~~.

~~(b)~~ The term does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

~~(14)(13)~~ "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

~~(15)(14)~~ "Invalid" means one who is physically or mentally incapacitated.

~~(16)(15)~~ "Limited liability company" ~~is as defined~~ has the meaning provided in 35-8-102.

~~(17)(16)~~ "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

~~(18)(17)~~ "Medical stability", "maximum healing", or "maximum medical healing" means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.

~~(19)(18)~~ "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

~~(20)(19)~~ "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at ~~or decision made~~ by the department.

1 ~~(24)~~(20) "Palliative care" means treatment designed to reduce or ease symptoms without curing the
2 underlying cause of the symptoms.

3 ~~(22)~~(21) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual
4 payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any
5 length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an
6 estimate may be made by the department for any employer starting in business if average payrolls are not
7 available. This estimate must be adjusted by additional payment by the employer or refund by the department,
8 as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by
9 calculating all wages, as defined in 39-71-123, that are paid by an employer.

10 ~~(23)~~(22) "Permanent partial disability" means a physical condition in which a worker, after reaching
11 maximum medical healing:

12 (a) has a permanent impairment established by objective medical findings;

13 (b) is able to return to work in some capacity but the permanent impairment impairs the worker's ability
14 to work; and

15 (c) has an actual wage loss as a result of the injury.

16 ~~(24)~~(23) "Permanent total disability" means a physical condition resulting from injury as defined in this
17 chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable
18 prospect of physically performing regular employment. Regular employment means work on a recurring basis
19 performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate
20 job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

21 ~~(25) The "plant of the employer" includes the place of business of a third person while the employer has~~
22 ~~access to or control over the place of business for the purpose of carrying on the employer's usual trade,~~
23 ~~business, or occupation.~~

24 ~~(26)~~(24) "Primary medical services" means treatment prescribed by a treating physician, for conditions
25 resulting from the injury, necessary for achieving medical stability.

26 ~~(27)~~(25) "Public corporation" means the state or a county, municipal corporation, school district, city, city
27 under a commission form of government or special charter, town, or village.

28 ~~(28)~~(26) "Reasonably safe place to work" means that the place of employment has been made as free
29 from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

30 ~~(29)~~(27) "Reasonably safe tools ~~and or~~ appliances" are tools and appliances that are adapted to and

1 that are reasonably safe for use for the particular purpose for which they are furnished.

2 ~~(30)~~(28) (a) "Secondary medical services" means those medical services or appliances that are
3 considered not medically necessary for medical stability. The services and appliances include but are not limited
4 to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to
5 address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or
6 rehabilitation facilities.

7 (b) (i) As used in this subsection ~~(30)~~ (28), "disability" means a condition in which a worker's ability to
8 engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The
9 restrictions may be combined with factors, such as the worker's age, education, work history, and other factors
10 that affect the worker's ability to engage in gainful employment.

11 (ii) Disability does not mean a purely medical condition.

12 ~~(31)~~(29) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of
13 a business enterprise.

14 (30) "State's average weekly wage" means the mean weekly earnings of all employees under covered
15 employment, as defined and established annually by the department before July 1 and rounded to the nearest
16 whole dollar number.

17 ~~(32)~~ (31) "Temporary partial disability" means a physical condition resulting from an injury, as defined
18 in 39-71-119, in which a worker, prior to maximum healing:

19 (a) is temporarily unable to return to the position held at the time of injury because of a medically
20 determined physical restriction;

21 (b) returns to work in a modified or alternative employment; and

22 (c) suffers a partial wage loss.

23 ~~(33)~~ (32) "Temporary service contractor" means a person, firm, association, partnership, limited liability
24 company, or corporation conducting business that hires its own employees and assigns them to clients to fill a
25 work assignment with a finite ending date to support or supplement the client's workforce in situations resulting
26 from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

27 ~~(34)~~ (33) "Temporary total disability" means a physical condition resulting from an injury, as defined in
28 this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical
29 healing.

30 ~~(35)~~ (34) "Temporary worker" means a worker whose services are furnished to another on a part-time

1 or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in
2 situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and
3 projects.

4 ~~(36)~~ (35) "Treating physician" means a person who is primarily responsible for the treatment of a
5 worker's compensable injury and is:

6 (a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges
7 to practice in one or more hospitals, if any, in the area where the physician is located;

8 (b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

9 (c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if there
10 is not a treating physician, as provided for in subsection ~~(36)(a)~~ (35)(a), in the area where the physician
11 assistant-certified is located;

12 (d) an osteopath licensed by the state of Montana under Title 37, chapter 3;

13 (e) a dentist licensed by the state of Montana under Title 37, chapter 4;

14 (f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in
15 subsections ~~(36)(a)~~ (35)(a) through ~~(36)(e)~~ (35)(e) who is licensed or certified in another state; or

16 (g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8,
17 recognized by the board of nursing as a nurse practitioner or a clinical nurse specialist, and practicing in
18 consultation with a physician licensed under Title 37, chapter 3, if there is not a treating physician, as provided
19 for in subsection ~~(36)(a)~~ (35)(a), in the area in which the advanced practice registered nurse is located.

20 ~~(37)~~ (36) "Work-based learning activities" means job training and work experience conducted on the
21 premises of a business partner as a component of school-based learning activities authorized by an elementary,
22 secondary, or postsecondary educational institution.

23 ~~(38)~~ (37) "Year", unless otherwise specified, means calendar year."
24

25 **Section 6.** Section 39-71-118, MCA, is amended to read:

26 **"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined.** (1) ~~The~~ As used in this
27 chapter, the term "employee" or "worker" means:

28 (a) each person in this state, including a contractor other than an independent contractor, who is in the
29 service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or
30 implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all

1 of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public
2 or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the
3 corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not
4 otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of
5 the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic
6 employment is excluded.

7 (b) any juvenile who is performing work under authorization of a district court judge in a delinquency
8 prevention or rehabilitation program;

9 (c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training
10 under a state or federal vocational training program, whether or not under an appointment or contract of hire with
11 an employer, as defined in ~~this chapter~~ 39-71-117, and, except as provided in subsection (9), whether or not
12 receiving payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in
13 vocational training programs, as outlined in this subsection, while they are on the premises of a public school
14 or community college.

15 (d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

16 (e) a person, other than a juvenile as ~~defined~~ described in subsection (1)(b), who is performing
17 community service for a nonprofit organization or association or for a federal, state, or local government entity
18 under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or
19 not under appointment or contract of hire with an employer, as defined in ~~this chapter~~ 39-71-117, and whether
20 or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

21 (i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an
22 impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39,
23 chapter 3, part 4, for a full-time employee at the time of the injury; and

24 (ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the
25 minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service
26 required under the order from the court or hearings officer.

27 (f) an inmate working in a federally certified prison industries program authorized under 53-1-301;

28 (g) a person who is an enrolled member of a volunteer fire department, as described in 7-33-4109, or
29 a person who provides ambulance services under Title 7, chapter 34, part 1; and

30 (h) a person placed at a public or private entity's worksite pursuant to 53-4-704 is considered an

employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of financial assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's public assistance participants and may only be for the duration of each participant's training while receiving financial assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment;

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

(c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(d) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c).

(4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

1 (b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an
2 employer, including but not limited to training time, response time, and time spent at the employer's premises.

3 (5) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a
4 member-managed limited liability company, the employer may elect to include as an employee within the
5 provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole
6 proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability
7 partnership, proprietorship, or limited liability company business.

8 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
9 naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage
10 desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner,
11 sole proprietor, or member is not considered an employee within this chapter until notice has been given.

12 (c) A change in elected wages must be in writing and is effective at the start of the next quarter following
13 notification.

14 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to the
15 minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination
16 of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less
17 than \$900 a month and not more than 1 1/2 times the state's average weekly wage, ~~as defined in this chapter.~~

18 (6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability
19 company, the employer may elect to include as an employee within the provisions of this chapter any corporate
20 officer or manager exempted under 39-71-401(2).

21 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
22 naming the corporate officer or manager to be covered and stating the level of compensation coverage desired
23 by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer
24 or manager is not considered an employee within this chapter until notice has been given.

25 (c) A change in elected wages must be in writing and is effective at the start of the next quarter following
26 notification.

27 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to the
28 minimum and maximum limitations of this subsection (6)(d). For premium ratemaking and for the determination
29 of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less
30 than \$200 a week and not more than 1 1/2 times the state's average weekly wage, ~~as defined in this chapter.~~

(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the state's average weekly wage.

(c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer firefighter pursuant to subsection (7)(a) and when injured in the course and scope of employment as a volunteer firefighter, may in addition to the benefits described in subsection (7)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may make an election for benefits. If an election is made, payrolls must be reported and premiums must be assessed on the assumed wage.

(8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

(10) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry,

as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(11) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (10)(b) or (10)(d) as a condition of approving the election under subsection (10)(d)."

Section 7. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, ~~as defined in 39-71-117,~~ and to all employees, ~~as defined in 39-71-118.~~ An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household ~~and~~ or domestic employment;

(b) casual employment ~~as defined in 39-71-116;~~

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a real estate, securities, or insurance salesperson paid solely by commission and without a guarantee of minimum earnings;

(f) employment as a direct seller as defined by 26 U.S.C. 3508;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;

(k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered.

As used in this subsection; (2)(k):

(i) "freelance correspondent" is means a person who submits articles or photographs for publication and is paid by the article or by the photograph; and ~~As used in this subsection;~~

(ii) "newspaper carrier":

~~(i)(A)~~ is means a person who provides a newspaper with the service of delivering newspapers singly or in bundles; ~~but and~~

~~(ii)(B)~~ does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(e);

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey who is performing under a license issued by the board of horseracing from the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing services under a license issued by the board of horseracing while on the grounds of a licensed race meet;

(p) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

1 (q) a person who performs services as a petroleum land professional. As used in this subsection, a
2 "petroleum land professional" is a person who:

3 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating
4 a business agreement for the exploration or development of minerals;

5 (ii) is paid for services that are directly related to the completion of a contracted specific task rather than
6 on an hourly wage basis; and

7 (iii) performs all services as an independent contractor pursuant to a written contract.

8 (r) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability
9 company who qualifies under one or more of the following provisions:

10 (i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the
11 limited liability company and does not receive any pay from the corporation or the limited liability company for
12 performance of the duties;

13 (ii) the officer or manager is engaged primarily in household employment for the corporation or the
14 limited liability company;

15 (iii) the officer or manager either:

16 (A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the
17 limited liability company; or

18 (B) owns less than 20% of the number of shares of stock in the corporation or limited liability company
19 if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in
20 subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company;
21 or

22 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,
23 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of
24 subsection (2)(r)(iii)(A) or (2)(r)(iii)(B).

25 (s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

26 (t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise
27 of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

28 (u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care
29 for individuals who, because of age or infirmity, are unable to care for themselves when the person providing
30 the service is employed directly by a family member or an individual who is a legal guardian;

1 (v) employment of a person who is not an employee or worker in this state as defined in 39-71-118(10).

2 (3) (a) A sole proprietor, a working member of a partnership, a working member of a limited liability
3 partnership, or a working member of a member-managed limited liability company who represents to the public
4 that the person is an independent contractor shall elect to be bound personally and individually by the provisions
5 of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers'
6 Compensation Act.

7 (b) The application must be made in accordance with the rules adopted by the department. There is a
8 \$17 fee for the initial application. Any subsequent application renewal must be accompanied by a \$17 application
9 fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs
10 of administering the program.

11 (c) When an application is approved by the department, it is conclusive as to the status of an
12 independent contractor and precludes the applicant from obtaining benefits under this chapter.

13 (d) The exemption, if approved, remains in effect for 2 years following the date of the department's
14 approval. To maintain the independent contractor status, an independent contractor shall submit a renewal
15 application every 2 years. The renewal application and the \$17 renewal application fee must be received by the
16 department at least 30 days before the anniversary date of the previously approved exemption.

17 (e) A person who makes a false statement or misrepresentation concerning that person's status as an
18 exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose the penalty
19 for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The
20 lien provisions of 39-71-506 apply to the penalty imposed by this section.

21 (f) If the department denies the application for exemption, the applicant may, after mediation pursuant
22 to department rules, contest the denial by petitioning the workers' compensation court.

23 (4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its
24 employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private
25 corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or
26 managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

27 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering
28 the notice to the board of directors of the corporation or to the management organization of the
29 manager-managed limited liability company; or

30 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by

1 delivering the notice to the board of directors of the corporation or to the management organization of the
2 manager-managed limited liability company and to the insurer.

3 (b) If the employer changes plans or insurers, the employer's previous election is not effective and the
4 employer shall again serve notice to its insurer and to its board of directors or the management organization of
5 the manager-managed limited liability company if the employer elects to be bound.

6 (5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership,
7 a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the
8 purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner,
9 member, or manager to exemption from coverage.

10 (6) Each employer shall post a sign in the workplace at the locations where notices to employees are
11 normally posted, informing employees about the employer's current provision of workers' compensation
12 insurance. A workplace is any location where an employee performs any work-related act in the course of
13 employment, regardless of whether the location is temporary or permanent, and includes the place of business
14 or property of a third person while the employer has access to or control over the place of business or property
15 for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided
16 by the department, distributed through insurers or directly by the department, and posted by employers in
17 accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign
18 as provided in this subsection is subject to a \$50 fine for each citation."

19
20 **Section 8.** Section 39-71-2211, MCA, is amended to read:

21 **"39-71-2211. Premium rates for construction industry -- filing required.** (1) With respect to each
22 classification of risk in the construction industry under plan No. 2, the advisory organization designated under
23 33-16-1023 shall file with the commissioner of insurance a method of computing premiums that does not impose
24 a higher insurance premium solely because of an employer's higher rate of wages paid.

25 (2) The commissioner shall accept a filing under subsection (1) that includes a reasonable method of
26 recognizing differences in rates of pay. This method must use a credit scale with the starting point set at 1.168
27 times the ~~Montana state's~~ average weekly wage as reported by the department.

28 (3) The advisory organization shall file a revenue neutral plan for new and renewed policies for prompt
29 and orderly transition to a method of computing premiums that is in compliance with the requirements of this
30 section.

(4) The state compensation insurance fund, plan No. 3, shall adopt the plan filed by the designated advisory organization or adopt a credit scale plan that meets the requirements of this section."

Section 9. Section 39-71-2312, MCA, is amended to read:

"39-71-2312. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of directors of the state compensation insurance fund provided for in 2-15-1019.

~~(2) "Department" means the department of administration provided for in 2-15-1001.~~

~~(3)~~(2) "Executive director" means the chief executive officer of the state compensation insurance fund.

~~(4)~~(3) "State fund" means the state compensation insurance fund provided for in 39-71-2313. It is also known as compensation plan No. 3 or plan No. 3."

NEW SECTION. **Section 10. Repealer.** Sections 39-71-221, 39-71-222, 39-71-416, 39-71-426, 39-71-427, 39-71-428, 39-71-801, 39-71-802, 39-71-803, 39-71-804, 39-71-805, 39-71-806, 39-71-807, 39-71-808, 39-71-809, 39-71-810, 39-71-811, 39-71-812, and 39-71-813, MCA, are repealed.

NEW SECTION. **Section 11. Directions to code commissioner.** Section 39-71-226 is intended to be renumbered and codified as an integral part of Title 39, chapter 71, part 23.

NEW SECTION. **Section 12. Effective date -- applicability.** [This act] is effective July 1, 2005, and applies to injuries occurring or occupational diseases contracted on or after July 1, 2005.

NEW SECTION. **Section 13. Termination date.** [Sections 3 and 4] terminate June 30, 2007.

- END -